



ADVISORY | INDUSTRY INFORMATION

## **AIFMD II 101: Part 3 – Delegation, authorisation and reporting**



On 15 April 2024, Directive [2024/927/EU](#) amending AIFMD (2011/61/EU) ("AIFMD I") and the UCITS Directive (2009/65/EC) as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds ("AIFMD II") entered into force. The entry into force of AIFMD II marks a significant milestone for the European asset management industry.

Our AIFMD II advisory series considers a number of key changes for the asset management industry introduced by AIFMD II. The [first part](#) of our advisory series focused on the key changes for managers pursuing loan origination strategies, in light of the new harmonised framework for loan originating activities across the European Union ("EU"). The [second part](#) of our series focused on the new legal framework under AIFMD II in relation to the use of liquidity management tools.

In this third part of our advisory series, we examine the key changes introduced under AIFMD II in respect of delegation, authorisation and regulatory reporting highlighting the changes applicable to alternative investment fund managers ("AIFMs").

Please also refer to our other AIFMD II publications "[AIFMD II – A closer look](#)" and "[AIFMD II: Timeline to Implementation](#)".

## AIFMD delegation changes

It is noted in the recitals to AIFMD II that it is necessary to make certain changes to improve the functioning of AIFMD I, including clarifying the standards applicable to AIFMs that delegate their functions to third parties. The revisions are generally in the nature of enhanced disclosure and reporting requirements and do not impose substantial additional obligations on AIFMs. The recitals to AIFMD II also expressly recognise the importance of third-party delegation as it "allows for the efficient management of investment portfolios and for sourcing the necessary expertise in a particular geographic market or asset class". We expect this will be welcomed by AIFMs and their delegates whose operating model is reliant on the AIFMD delegation regime. AIFMD II also acknowledges the importance of supervisors being able to access updated information on the main elements of any relevant delegation arrangements, including in the area of appropriate oversight and control of delegation arrangements, in all EU member states. Accordingly, AIFMD II aims to ensure that this information is made more regularly available to national competent authorities ("NCAs") and to the European Securities and Markets Authority ("ESMA").

### Delegation requirements

Article 20 of AIFMD I (delegation of AIFM functions) has been expanded under AIFMD II to clarify that the AIFM's obligations relating to delegation apply in respect of the performance of ancillary services set out in Article 6(4) as well as those functions listed in Annex I and that these obligations apply irrespective of the regulatory status or location of any delegate or sub-delegate.

In cases where the AIFM's marketing function<sup>1</sup> is performed by one or several distributors, who are acting on their own behalf, and who market the alternative investment fund ("AIF") (in accordance with the provisions of MiFID (2014/65/EU) or through insurance-based investment products in accordance with the Insurance Distribution Directive (2016/97/EU)), a derogation is introduced under AIFMD II to the effect that such marketing function shall not be considered to be a delegation by the AIFM for the purposes of Article 20, irrespective of any distribution agreement between the AIFM and the distributor.

<sup>1</sup> Referred to in Annex I, point 2(b)

## AIFM authorisation

Under AIFMD I, AIFMs are required to provide NCAs at the authorisation stage and on ongoing basis with information on arrangements made in respect of delegation and sub-delegation to third parties. Under AIFMD II, this requirement has been broadened to include the provision of certain additional information including, but not limited to:

- the name and domicile of the delegate;
- a detailed description of the human and technical resources employed by the AIFM for performing day-to-day portfolio management or risk management tasks within the AIFM and for monitoring the delegated activity;
- a brief description of the delegated portfolio/risk management function;
- whether the delegation is a partial or full delegation; and
- a description of the periodic due diligence measures to be carried out by the AIFM to monitor the delegated activity.

Interestingly, the recitals to AIFMD II provide that the data collected on the amount and percentage of the assets of the managed AIFs that are subject to delegation arrangements concerning the portfolio management function are for the purpose of providing a greater overview of the operation of delegation, and are not on their own an evidential indicator for determining the adequacy of substance or risk management arrangements, or the effectiveness of oversight or control arrangements at the level of the AIFM.

### Substance

AIFMD II mandates AIFMs as part of the NCA authorisation process, to provide detailed information on the human and

technical resources that will be utilised in connection with the applicant AIFM's business activities. At least two natural persons domiciled in the EU, shall be employed by the AIFM or be executive members of the AIFM on a full time basis in order to conduct the business of the AIFM. AIFMD II notes that regardless of this statutory minimum, more resources may be required depending on the size and complexity of the AIF. The recitals note that it is appropriate to encourage AIFMs managing AIFs marketed to retail investors to appoint at least one independent or non-executive director. From an Irish perspective these rules are materially consistent with the Central Bank of Ireland's existing approach to minimum substance requirements for AIFMs.

### Managing AIFs at the initiative of a third party

AIFMD II introduces a new requirement relevant for third party AIFMs who manage or intend to manage an AIF at the initiative of a third party (including cases where that AIF uses the name of a third party initiator or where an AIFM appoints a third party initiator as a delegate) to submit detailed explanations and evidence of its compliance with the conflicts of interest requirements set out in AIFMD, to the NCA in its home member state. In particular, the AIFM is required to specify the reasonable steps it has taken to prevent conflicts of interest arising from the relationship with the third party or, where those conflicts of interest cannot be prevented, how it identifies, manages, monitors and, where applicable, discloses those conflicts of interest in order to prevent them from adversely affecting the interests of the AIF and its investors.

## AIFM regulatory reporting

AIFMD II also introduces changes for regular reporting to NCAs under Article 24, which will also be relevant for non-EU AIFMs marketing AIFs under national private placement regimes. The areas in which AIFMs were required to report to NCAs have now been broadened under AIFMD II to include information regarding delegation arrangements concerning portfolio management or risk management functions, as follows:

- i. information on the delegates, specifying their name and domicile or registered office or branch, whether they have any close links with
  - ii. the number of full-time equivalent human resources employed by the AIFM for performing day-to-day portfolio management or risk management tasks within that AIFM;
  - iii. a list and description of the activities concerning portfolio management and risk management functions which are delegated;
  - iv. where the portfolio management function is delegated, the amount and percentage of the AIF's assets which are subject to delegation arrangements concerning the portfolio management function;

- v. the number of full-time equivalent human resources employed by the AIFM to monitor the
- vi. the number and dates of the periodic due diligence reviews carried out by the AIFM to monitor the delegated activity, a list of issues identified and, where relevant, of the measures adopted to address those issues and the date by which those measures are to be implemented;
- vii. where sub-delegation arrangements are in place, the information required under points (i), (iii) and in respect of the sub-delegates and the activities related to the portfolio management and risk management functions that are sub-delegated; and
- viii. the commencement and expiry dates of the delegation and sub-delegation arrangements.

Other revisions to the reporting regime which will be reflected in the reporting templates under Annex IV include an obligation to provide information in respect of:

- instruments traded and markets of which it is a member or where it actively trades, exposures and assets of each AIF it manages (significantly, this adapts the current position where it is the “principal” or “main” instruments, markets, exposures, and assets which are required to be reported);
- the total amount of leverage employed by the AIF; and
- and a list of member states in which the units or shares of the AIF are actually marketed by the AIFM or by a distributor which is acting on behalf of that AIFM.

## UCITS Directive

A full summary of all changes to the UCITS Directive, introduced by the AIFMD II reforms are not described here. However, it is important to note that the changes will result in an alignment of reporting obligations and delegation requirements imposed on both UCITS management companies and AIFMs under their respective legislative frameworks. A new reporting obligation is introduced under the UCITS Directive, akin to Annex IV reporting in respect of AIFs, whereby UCITS management companies will be required to report regularly to NCAs of the home member state of the UCITS on markets and instruments in which they trade on behalf of the UCITS, as well as arrangements for managing the liquidity of the UCITS, results of stress tests and use of leverage.

The UCITS management company will be responsible for ensuring that the performance of functions and the provision of services by a delegate comply with the UCITS Directive (irrespective of the regulatory status or location of any delegate or sub-delegate). The UCITS management company must also be able to justify to their home member state NCA its entire delegation structure and to provide objective reasons for the delegation of functions.

## Timing considerations

As outlined above, AIFMD II entered into force on 15 April 2024 and will need to be transposed by EU member states into their national law by **16 April 2026**, at the latest. Transposition into national law in Ireland and other EU member states can, in theory, be implemented earlier than the above deadline.

The provisions relating to the regular reporting to NCAs are to be applied by member states from **16 April 2027** and by that date ESMA is required to develop regulatory technical standards and implementing technical standards specifying the appropriate level of standardisation and at what intervals by way of relevant Annex IV reporting templates. ESMA shall not however introduce any additional reporting requirements.

It is to be welcomed that the AIFMD II changes in respect of delegation were not more burdensome and that the third-party delegation model remains an attractive proposition for funds managers. ESMA is required under AIFMD II to issue a report by **16 April 2029** analysing market practices regarding delegation and compliance with matters including the delegation and substance requirements under AIFMD II, which may see continued supervisory scrutiny on delegation practices in light of the new measures.



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## Further information

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